



**From:** Layla Taylor  
**Sent:** Friday, February 21, 2020 10:44 AM  
**To:** [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us); '[angela.m.puccini@state.ma.us](mailto:angela.m.puccini@state.ma.us)'  
<[angela.m.puccini@state.ma.us](mailto:angela.m.puccini@state.ma.us)>  
**Cc:** John Provost <[jprovost@northampton-k12.us](mailto:jprovost@northampton-k12.us)>; Brendan Hughes  
<[Brendan.Hughes@sullivanandhayes.com](mailto:Brendan.Hughes@sullivanandhayes.com)>; [gjochem@gazettenet.com](mailto:gjochem@gazettenet.com)  
**Subject:** RE: SPR20/0128

Angela M. Puccini, Esq.  
Senior Attorney  
Office of the Secretary of the Commonwealth  
Public Records Division

Dear Attorney Puccini:

This communication is in response to a compliance inquiry regarding SPR20/0128 that you sent to Annie Thompson, the Northampton Public School's Committee Clerk & Assistant to the Superintendent, yesterday. Please be advised that in me and my Firm represent the Northampton Public Schools in this matter.

As a follow-up to your inquiry, my colleague, Attorney Brendan Hughes, timely served the supplemental response yesterday on Feb. 20, 2020 on Ms. Greta Jochem and copied it to the Supervisor of Public Records at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us). While it appears that the communications may have crossed, in Attorney Hughes absence and in an abundance of caution I have re-forwarded the response to you and to [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us). The response appears below. Please note that the supplemental response also included the attached Exhibit 1, which it referenced.

Should you have any questions, feel free to reach out to me or Brendan.

Kind Regards,

*Layla*

*/s/ Layla G. Taylor*

Layla G. Taylor, Esq.  
[Layla.Taylor@sullivanandhayes.com](mailto:Layla.Taylor@sullivanandhayes.com)

SHQ File No.:

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**From:** Brendan Hughes  
**Sent:** Thursday, February 20, 2020 5:02 PM  
**To:** [gjochem@gazettenet.com](mailto:gjochem@gazettenet.com)  
**Cc:** John Provost <[jprovost@northampton-k12.us](mailto:jprovost@northampton-k12.us)>; [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)  
**Subject:** Supplemental Communication to the School District's January 17, 2020 Response to Daily Hampshire Gazette's Record Request Dated November 6, 2019 Pursuant to the Supervisor of Public Records February 5, 2020 Determination

<< OLE Object: Picture (Device Independent Bitmap) >>

February 20, 2020

**VIA E-MAIL:** [gjochem@gazettenet.com](mailto:gjochem@gazettenet.com)

Ms. Greta Jochem  
Daily Hampshire Gazette  
115 Conz Street

Northampton, MA 01060

Re: Supplemental Communication to the School District's January 17, 2020 Response to Daily Hampshire Gazette's Record Request Dated November 6, 2019 Pursuant to the Supervisor of Public Records February 5, 2020 Determination

Dear Ms. Jochem:

As you know, Sullivan, Hayes & Quinn, LLC and I represent the Northampton Public Schools. This letter concerns your public records request dated November 6, 2019 in which you requested the following records from the School District:

*Emails sent to or by Northampton School administrators- including Superintendent John Provost- that mention Susan (or Sue) Biggs, Layla Taylor, or the word "investigation" from the following dates: 1/6/18, 2/1/18, 4/25/18, 4/27/18, 5/1/18, 5/2/18, 5/18/18, 7/19/18 and 8/28/18.*

The purpose of this letter is to supplement our previous response dated January 17, 2020 in which we provided you the redacted copies of all responsive documents. This supplemental response is provided pursuant to the direction of the Office of the Supervisor of Public Records. In this regard, clarification and further information is provided with respect to our position with regard to the redaction of information in these documents insofar as they are redacted in accordance with M.G.L. C. 4, § 7 (26) (c) and the common law attorney client privilege.

**I. Personnel Files Exemption Under M.G.L.C. § 7 (26)(c)**

The personnel files clause under M.G.L.C. § 7 (26)(c) exempts from disclosure all personnel information that relates to an identifiable individual and is of a "personal nature." See Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). In this regard, personnel information that is "useful in making employment decisions regarding an employee" may be withheld from public disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App Ct. 1, 5 (2003).

Records that you sought previously in this case that were compiled and/or received in connection to this same workplace investigation have already been held to be exempt by the Supervisor of Public Records in Case No. SR19/1541. See Supervisor of Public Records Decision in Case No. SRP 19/1541. Please see the attachment marked as "Exhibit 1" to this correspondence. All emails sought pursuant to this information request clearly pertain to school district correspondences that are connected to a confidential workplace investigation of a School District employee. All of the emails are maintained by the School District in the underlying investigative file that was utilized to adduce facts in the investigation to determine whether the alleged misconduct occurred and therefore, whether adverse employment action, was necessary to be taken against the staff member. The School District's position therefore remains that redaction of all information that can be used to identify the subject of the workplace investigation as it pertains to these records is entirely consistent with both the governing exemption as well as your office's interpretation of such statute as it pertains to previous information requests about the same

investigation. These emails, constitute one of the ‘core categories of personnel information’ that are useful in making employment decisions regarding an employee and should therefore be withheld.

## **II. Privacy Exemption under M.G.L.C. § 7 (26)(c)**

When determining whether the privacy clause of Exemption (c) applies to a record, the following factors must be considered:

Whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources.

See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 292 (2017)

The submitted request is one of multiple requests for documents submitted by the Hampshire Gazette that requests documents pertaining to a workplace investigation into a staff member for serious misconduct alleged to have occurred over thirty years ago at a previous place of employment in a different state. As has been previously conveyed, the School District was not made aware of these allegations prior to hiring the staff member. The School District did not even learn of the allegations until the complainant brought them forward a few years ago.

The School District fully investigated these allegations and ultimately found that they could not be substantiated. The requested emails are all correspondences that pertain to this investigation and concern retrieval of information as to the specifics of the allegations, how to handle outside agency inquiries concerning the affected individual including specifics of the allegations, inquiry from the Northampton Police Department to the state where the alleged misconduct is claimed to have occurred, and inquiries from counsel for the Complainant as to updates on the status of the investigation. As indicated in our previous response dated January 17, 2020, which is incorporated by reference, some of these inquiries contain specific identifying information and information that discloses the exact nature of the allegations and contain references to individuals, places and alleged events that can be used to identify the identity of the complainant, the identity of the accused employee, and the identity of other accused individuals who do not work for the school

The School District’s position is straightforward as it pertains to the requested document also being exempt under the privacy clause of Exemption (c). The requested emails, without redaction obviously and clearly implicates the staff member accused of wrongdoing of a serious nature. Release of the details of these unproven allegations would therefore not only significant damage the accused staff member’s reputation, but invade their privacy. Moreover, the staff member is not even alleged to have engaged in any misconduct while employed by Northampton Public Schools, as the only allegation comes prior to the staff member’s employment over thirty years ago in a prior state. The allegations referred to in the email are the first time any such allegations have ever been brought against this staff member. The highly sensitive nature of this

investigation discussed in the requested document coupled with the fact that the allegations were fully investigated and not substantiated clearly weigh against any need for the public to receive this information unredacted. Disclosure would merely attach troubling information and clear reputable damage to an individual with charges against them that couldn't be substantiated. The redaction of the emails is more than a fair balance of the competing interests. You are able to view the emails that were previously supplied and understand that a thorough investigative process took place without needing to examine details of unsubstantiated investigation which will unduly damage the accused staff member's reputation.

Additionally, it should also be noted that the release of these emails insofar as they describe the unproven allegations against the accused staff member also reveal intimate details regarding the complainant's personal life. In this regard, it is respectfully submitted that the submitted redactions also protect the complainant's privacy as provided for and required under M.G.L.C. § 7 (26)(c).

Finally, regarding prong three of the privacy cause, it appears that the Hampshire Gazette has the ability to obtain all correspondences, which are not attorney-client privileged, from the Complainant. In this regard, all of the remaining requested emails are to or from Counsel for the Complainant. Outside of the School District, the only source of information about the exact dates email communications were sent out by the Complainant's lawyer would have come from either the Complainant or the Complainant's lawyer. Those records should be readily available from either such source.

To the extent it is deemed necessary, the Hampshire Gazette therefore should have the ability to obtain this emails directly from the complainant or their counsel who has an ethical obligation to maintain the correspondence in her case file. Accordingly, the City respectfully submits that analysis of the three relevant factors under the privacy clause of Exemption (c) compels a conclusion that the sought-after email correspondences in unredacted form are exempt from public disclosure under this additional ground as well.

### **III. Common Law Attorney-Client Privilege**

Finally, insofar as the request seeks emails which concern legal advice rendered by Attorney Layla Taylor or Sullivan, Hayes & Quinn in connection with the investigation, those emails are also exempt from public disclosure as they are attorney-client privileged and not required to be produced. Suffolk Construction v. Dept. of Capital Asset Management, 449 Mass. 444 (2007). Specifically, Attorney Taylor and Sullivan, Hayes & Quinn LLC represent both the City of Northampton and the Northampton Public Schools.

Without disclosing the attorney-client privileged contents of those communications, the substance of the record for which the District is claiming privilege consists of emails in which the Northampton Public Schools and/or the City of Northampton's Police Department solicited advice regarding their investigation and/or provided information necessary for undersigned counsel to render legal advice in connection to the investigation and/or render legal advice regarding proper

responses to the request for information. In addition to consisting of legal advice, these communications were made in confidence via email transmittal to the agents of the represented party (the School District) and no circumstances have arisen or events have occurred to waive the privilege of these communications.

Documents that are also attorney-client privileged emails included on the attached documents and that contain the names of the author and recipients, and the date of the communications are as follows:

- Page 11, 14 and 15 of the packets of emails from 2/1/2018 and include communications between Sergeant Victor Caputo of the Northampton Police Department, Attorney Layla Taylor, Superintendent Provost, and Northampton Police Chief Jody Kasper.
  - Page 11: 1/2/18 In this communication, advice is sought from School District Counsel by a Northampton Police Sergeant with respect to how he may respond to an inquiry from counsel for the accused staff member about the status of the workplace investigation.
  - Page 14: 1/2/18 Advice is rendered by School District Counsel in response to the Police Sergeant inquiry concerning the same.
  - Page 15: 11/26/17 This is follow-up communication from the Police Sergeant concerning his inquiry to the state of Connecticut concerning investigation done into the accused staff member. The communication is sent in connection with the advice he seeks in January 2, 2018 email to School District Counsel.
- Pages 1, 3, 5, 6, 11 and 12 of the packets of emails from 5/1/2018 and include communications between Attorney Layla Taylor and Superintendent Provost.
  - Page 1: 5/1/18 Advice is sought from School District Superintendent with respect to how to handle an inquiry about completing a State of CT Educational Employer Verification form concerning the subject of a workplace personnel investigation.
  - Page 3: 5/1/18 Advice is rendered from School District Counsel with respect to how to handle such inquiry and with respect to interviewing the accused in a confidential workplace personnel investigation.
  - Page 5: 5/1/18 Response is sent by School District Superintendent in connection with such advice, including a follow-up inquiry.
  - Page 6: 5/1/18 This is the same correspondence redacted on Page 3 and is repeated as part of the email string.
  - Page 11: 5/1/18 School District Superintendent sends an email concerning a draft communication to the accused for legal review by School District Counsel in connection with her previously rendered advice as described in the earlier bullet point as to the Page 3 of this email string. He also seeks advice with how to proceed as to a fact witness.

- Page 12: 5/1/18 School District Counsel renders advice in response to the Superintendent's email on Page 11 with respect to his inquiry as to the fact witness.

It is also noted that the documents previously provided clearly identify the full names of all individuals copied on the correspondences claimed to be covered by the attorney-client privilege.

The attorney-client privileged information as is sufficiently described above in accordance with *Suffolk Construction* has been redacted. The School District's position is that this supplemental information constitutes more than the required "detailed description" of the privileged records and includes the necessary information of "names of the author and recipients, the date, substance of the records and grounds upon which the privilege is being claimed.

At this time, the District believes that by way of this supplemental correspondence as well as its underlying correspondence dated January 17, 2020 it has provided as much detail regarding the requested records as possible without violating important individual privacy rights which are the reasons for the exemptions set forth in M.G.L. C. § 7 (26) (c). If it is deemed necessary by the Supervisor of Public Records, the School District is willing and able to expeditiously arrange for an in-camera inspection so that the Supervisor may verify the basis for the School District as to the claimed exemptions pursuant to M.G.L.C. § 7 (26)(c) and the common law attorney client privilege.

You have a right appeal our response to this request pursuant to M.G.L. Ch. 66, Section 10A(a) and the right to seek judicial review as to an unfavorable decision by commencing a civil action in Superior Court pursuant to M.G.L. Ch. 66, Section 10A (c). Should you appeal, the District would certainly be willing to have the Supervisor of Public Records perform an in-camera inspection as to the records for which it is claiming the privacy exemption.

Kind regards,

SULLIVAN, HAYES & QUINN, LLC

/s/ *Brendan L. Hughes*

Brendan L. Hughes

BLH

Attachments

<< File: Exhibit 1.pdf >>

cc: Superintendent John A. Provost, Ed.D.  
Supervisor of Public Records [[pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)]

SHQ File: NOHOPS-1

[www.sullivanandhayes.com](http://www.sullivanandhayes.com)

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